



**In the Upper Tribunal
(Immigration and Asylum Chamber)
Judicial Review**

JR-2022-LON-
000057

In the matter of an application for Judicial Review

**The KING
(on the application of BM)
(ANONYMITY DIRECTION MADE)**

Applicant

and

LEEDS CITY COUNCIL

Respondent

ORDER

BEFORE Upper Tribunal Judge McWilliam

HAVING considered all documents lodged and having heard from Mr A Berry, Counsel instructed by Bhatia Best Solicitors appearing on behalf of the Applicant and Ms S Hurst, Counsel instructed by Leeds City Council appearing on behalf of the Respondent at a hearing on 8 and 9 December 2022 and having handed down judgement on 28 March 2023

IT IS ORDERED THAT:

1. The Applicant was born on 5 May 2003.
2. The judicial review application is dismissed.
3. The Applicant shall pay the Respondent's reasonable costs to be subject to a detailed assessment if not agreed. The Applicant being a person subject to costs protection under s. 26 of the Legal Aid Sentencing and Punishment of Offenders Act 2012.
4. There is to be a detailed assessment of the Applicant's publicly funded costs.

Signed: Joanna McWilliam

Upper Tribunal Judge McWilliam

Dated: 28 March 2023

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): *31 March 2023*

Solicitors:

Ref No.

Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).



Case No: JR-2022-LON-000057 V3

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

8th and 9th December 2022

Before:

UPPER TRIBUNAL JUDGE McWILLIAM

Between:

THE KING
on the application of
BM

Applicant

- and -

LEEDS CITY COUNCIL

Respondent

Mr A Berry, Counsel
(instructed by Bhatia Best Solicitors), for the Applicant

Ms S Hurst, Counsel
(instructed by Leeds City Council (LCC)) for the Respondent

Hearing date: 8th and 9th December 2022

J U D G M E N T

Judge McWilliam:

1. The purpose of these proceedings is to determine the age of BM. BM, a citizen of Afghanistan, states that he is aged 17 and that he was born on 15 May 2005. The Respondent relies on an age assessment conducted by social workers employed by Leeds City Council (LCC) on 1 and 2 July 2021. There were two age assessment interviews which were carried out

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- by social workers, Ms Laura McCullough and Ms Cheryl Swaby. There were two “minded to” meetings on 7 and 9 July 2021 which were carried out by Ms Laura McCullough and Ms Fran Holroyd (an advanced practitioner and unaccompanied asylum-seeking children lead for LCC). Also present at the meetings were an interpreter from Leeds Central Interpreting Unit and Daniel Glover from the Refugee Council acting as an appropriate adult to the Applicant.
2. The Respondent does not agree that the Applicant is the age he claims to be. The Respondent relies on the age assessment to support that his date of birth is 5 May 2003, therefore making him aged 18 when he arrived in the United Kingdom and not aged 16 as he claims. It is agreed by the parties that BM came to the United Kingdom on 1 June 2021.
 3. On 11 October 2021 the Applicant issued judicial review proceedings. On 6th January 2022 His Honour Judge Saffman granted permission for judicial review and transferred the claim to the Upper Tribunal. Directions have since been made by the Upper Tribunal and on 17 August 2022 there was a Case Management Review.
 4. I have before me the Applicant’s indexed bundle of documents. This includes the pleadings, the agreed facts and issues to be determined, court orders, witness statements, pre-action correspondence and other relevant documents, including the age assessment and miscellaneous documents.
 5. I have read and considered all the documents even if they are not specifically identified in this decision. It is not my role to determine factual issues that may be relevant to the Applicant’s asylum application or to give a view on that application. An asylum claim is, in any event, to be assessed on a different standard of proof (the “real risk test”) and in a context in which the burden of proof rests on the asylum Applicant.
 6. There are witness statement from the social workers setting out their experience and exhibiting their handwritten notes of the interview. There are documents which the Applicant relies on, namely the CID search summary report: GCID case record sheets, ASU call notes, CID calendar events, detainee detention history and notification of liability to detention.
 7. The Applicant gave evidence and was cross-examined with the assistance of an interpreter at a face-to-face hearing. I confirmed with the interpreter and the Applicant that they understood each other. The representatives were content that this was the case. Both representatives relied on skeleton arguments. The Applicant has not provided the Home Office or the Respondent with any identification documents. The sole issue to be determined by the Tribunal is the Applicant’s age and date of birth.

The law

8. I will summarise the applicable legal principles which I have applied in this case. In R (A) v Croydon LBC [2009] UKSC 8 the Supreme Court decided that “there is a right or a wrong answer” to the question whether an individual is or is not a child and that it was for the court to determine it. A person’s age is a fact precedent to a local authority exercising any of its powers under the Children Act 1989. I must therefore determine, in my inquisitorial role and on the balance of probabilities, whether the Applicant is a child. Neither party is required to prove the precedent fact and neither party bears the burden of proof (R (CJ) v Cardiff City Council [2011] EWCA Civ 1590). It is open to me having carried out a holistic assessment of all material evidence to reach a conclusion that is different from both the claimed age and the assessed age.
9. The judgment in R (B) v Merton London Borough Council [2003] EWHC 1689 (Admin), [2003] 4 All ER 280 laid down guidance in judicial review proceedings on appropriate processes to be adopted when a local authority is assessing a young person’s age in borderline cases. Assessments which comply with those guidelines are said to be Merton compliant. The case of VS v The Home Office [2014] EWHC 2483 (QB) contains a helpful summary of the Merton guidelines, as modified by subsequent decisions, at [78]. I summarise the main points made:-
 - “(1) The purpose of an age assessment is to establish the chronological age of a young person.
 - (2) The decision makers cannot determine age solely on the basis of the appearance of the applicant, except in clear cases.
 - (3) Demeanour can be notoriously unreliable and by itself constituted only ‘somewhat fragile material’: NA v LB of Croydon [2009] EWHC 2357 (Admin) per Blake J at [28]. Demeanour will generally need to be viewed together with other things.
 - (4) There should be ‘no predisposition, divorced from the information and evidence available to the local authority, to assume that an applicant is an adult, or conversely that he is a child’: see Merton per Stanley Burnton J at [37-38]. The decision, therefore, needs to be based on particular facts concerning the particular person.
 - (5) There is no burden of proof imposed on the applicant to prove his or her age in the course of the assessment: see Merton per Stanley Burnton J at [38], confirmed by R (CJ) v Cardiff CC [2011] EWCA Civ 1590.
 - (6) Benefit of any doubt is always given to the unaccompanied asylum-seeking child since it is recognised that age assessment is not a scientific process: A and WK v London Borough of Croydon & Others [2009] EWHC 939 (Admin) per

Collins J at [40]; see also [21] of A (AB) v Kent County Council [2020] EWHC 109 (Admin).

- (7) The two social workers who carry out the age assessment should be properly trained and experienced: A and WK per Collins J at [38].
 - (8) The applicant should have an appropriate adult, and should be informed of the right to have one, with the purpose of having an appropriate adult also being explained to him or her.
 - (9) The applicant should be told the purpose of the assessment.
 - (10) The decision ‘must be based on firm grounds and reasons’ [and] ‘must be fully set out and explained to the applicant’: A and WK per Collins J at [12].
 - (11) The approach of the assessors must involve trying to establish a rapport with the applicant and any questioning, while recognising the possibility of coaching, should be by means of open-ended and not leading questions’.
 - (12) It is ‘equally important for the assessors to be aware of the customs and practices and any particular difficulties faced by the applicant in his home society’: A and WK per Collins J at [13].
 - (13) It is ‘axiomatic that an applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him’: R (FZ) v Croydon LBC [2011] EWCA Civ 59, [21].
 - (14) It is not sufficient that the interviewing social workers withdraw to consider their decision, and then return to present the applicant ‘with their conclusions without first giving him the opportunity to deal with the adverse points’.
 - (15) Assessments devoid of detail and/or reasons for the conclusion are not compliant with Merton guidelines; and the conclusions must be ‘expressed with sufficient detail to explain all the main adverse points which the fuller document showed had influenced the decision’ (FZ, at [22]).”
10. In R (AM) v Solihull Metropolitan Borough Council [2012] UKUT 000118 (IAC) the Vice President of the Upper Tribunal stated, at [15],

“In the present case the evidence is wide-ranging. It may therefore be appropriate to make some general observations about the impact of evidence of various sorts and from various sources in this type of case. First, we think that almost all evidence of physical characteristics is likely to be of very limited value. That is because, as pointed out by Kenneth Parker J in R (R) v Croydon [2011] EWHC 1473 (Admin) there is no clear relationship between chronological

age and physical maturity in respect of most measurable aspects of such maturity.”

11. The guidance given in Merton was approved by the Supreme Court in R (A) v London Borough of Croydon [2009] UKSC 8 where the following was stated:

“The decision maker cannot determine age solely on the basis of the appearance of the applicant. In general, the decision maker must seek to elicit the general background of the applicant, including his family circumstances and history, his educational background, and his activities during the previous few years. Ethnic and cultural information may also be important. If there is reason to doubt the applicant’s statement as to his age, the decision maker will have to make an assessment of credibility and he will have to ask questions designed to test his credibility.”

12. The observations in R (AM) were endorsed by the Administrative Court in GE Eritrea, R (on the application of) v Secretary of State for the Home Department & Anor [2015] EWHC 1406 (Admin) (at [74]). In the earlier decision of NA v LB of Croydon [2009] EWHC 2357 (Admin) Blake J indicated, at [27], that physical appearance alone was a notoriously unreliable basis for assessment of chronological age. This was endorsed in VS (at [78]). In R (AM) the following was also stated:

“There may be value to be obtained from observations of demeanour and interaction with others made over a long period of time by those who have opportunity to observe an individual going about his ordinary life. ... It [is] difficult to see that any useful observations of demeanour or social interaction or maturity can be made in the course of a short interview between an individual and a strange adult.”

13. The Upper Tribunal considered that the view of a person who could point to consistent attitudes and a number of supporting instances over a considerable period of time was likely to carry weight that observations made in the artificial surroundings of an interview could not carry. The Tribunal also noted that the evidence of interaction between an age-disputed individual and other young people may well assist in making an age assessment. The approach in R (AM) was endorsed in R (GE) v Secretary of State and Bedford Borough Council [2015] EWHC 1406 (Admin) where the Administrative Court noted that people can behave in a formal interview in a way that is very different from their normal behaviour as a result of nervousness, fear, feeling of intimidation, or because they simply want the experience to end.
14. In MVN v LB Greenwich [2015] EWHC 1942 the Administrative Court observed that the primary focus will be on the credibility of the person’s evidence concerning their age, but it is permissible to have regard to credibility more generally, as long as the primary focus is not forgotten. Any assessment of credibility must be made “in the round” and in light of all relevant evidence, including background country evidence and expert reports (Mibanga v Secretary of State [2005] EWCA Civ 367, Karanakaran

v Secretary of State [2000] EWCA Civ 11), and allowance should be given to the fact that asylum seekers may have problems giving coherent accounts of their history: R (N) v Secretary of State [2008] EWHC 1952 (Admin).

15. When assessing the plausibility of the Applicant's account I additionally remind myself that reliance on inherent improbability may be dangerous or inappropriate where the conduct in question has taken place in a society whose conduct and customs are very different from those in the United Kingdom (HK v Secretary of State [2006] EWCA Civ 1037, at [29]; Araghi v Secretary of State [2006] EWCA Civ 973, at [7]).

The Age Assessment

16. It is not necessary for me to set out the age assessment in full. I shall set out the "social worker analysis". (Analysis of the information gathered).

"When concluding the age assessment the assessors had key points to clarify with [BM] which led us to believe that he is older than his claimed age of 16. These were individually explained to [BM] and he was given opportunity to respond to these:

Discrepancies in the date of birth shared:

There are four potential dates of birth that have been given throughout the assessment. Initially [BM] was considered by the Home Office to be an adult (Leeds local authority are not sure if he was subject to a full age assessment or if [BM] did not claim at this point to be a minor). His original paperwork states his date of birth is 07/02/1996.

The date of birth [BM] gave to the two Leeds social workers, who initially visited him at the hotel was 12/02/2005. In the first assessment session [BM] very clearly told assessors he knew his DOB in the Western calendar to be 15 September 2005. Assessors are unable to understand how he came to know the year of his birth in the Gregorian calendar when he does not know this in the Afghani calendar - which he disclosed to this being the calendar they use at home.

We understand that to covert DOB to another calendar is difficult and we are not implying he is deliberately trying to falsify the date however given the different information, lack of clarity on how he determined the Western date and [BM's] uncertainty of if he has had or due a birthday, assessors cannot be sure, based on the information given that [BM] does not know his exact date of birth without doubt.

Physical appearance:

Taking into account [BM's] physical appearance and the toil of his travelling, the assessors were of the opinion that even giving benefit of the doubt he appears older than his claimed age of 16. We

accept that his experience and journey to the UK has been particularly difficult and that this is likely to have affected his physical presentation to some degree. However, his appearance is not in line with his account of someone who has lived on the streets and been malnourished for four years and therefore does give assessors some hesitance in the validity of his account. He does not appear thin/gaunt, which we would expect to see signs of from someone who has lived in poor circumstances in the street for two years and then had an arduous journey with little food provided.

He has smooth, mature looking appearance, in line with his story we would expect him to have weathered older features if sleeping rough in the conditions of Afghanistan. We appreciate he has a 'youthful appearance' but he does appear to have a look of an older aged adolescence. Assessors have a wide range of experience of working with young people from Afghanistan and given this knowledge and awareness we feel his appearance is more in line with someone between the age of 18 - 20.

Unreliability of timeline:

The timeline he gave is not accurate and does not fully add up. In his account there are two years unaccounted for between finishing school and father's death. A large part of assessors understanding his age hinges on his account of his four years in school from the age of 6 and his knowing his age when his father died. [BM] told assessors he stopped school when his father died and that he was twelve. Then his mother died six months later. It is on this basis that he determined he was 14 and a half when leaving Afghanistan two years later. However, when assessors drew out a timeline of this, it showed that if [BM] started school at 6 years old and completed four years he would have been 10 going into his 5th year when he stopped school due to his dad's death. Therefore this does not fit with his version of events and is unreliable to use this as a basis of determining his age.

Secondly, there is no explanation for how he has accurately been able to keep account of time despite giving assessors very particular times/timeline. His whole explanation hinges on his word that he is able to accurately record the time he spent in the streets/various countries despite his own admittance that he had no access to a calendar or knew the dates/months of when he left Afghanistan. For instance, he made reference to knowing he was 14 when he left Afghanistan because he knew it had been two years since his mother passed away. However, was unable to answer questions of when his mother passed away, recall what month or even what season it was. It is hard for assessors to accept that someone could keep such accurate recording in their head, especially in such chaotic circumstances where it would be easy to lose track of time passing. Therefore, even if the individual believes himself to be 16 there is room for error in his recording that could likely make him older than his claimed age.

Demeanour during sessions:

His demeanour was in line with someone assessors would consider to be more mature. [BM] presented as frustrated and at times disinterested and impatient with a confident tone to his voice. He maintained eye contact with the interpreters throughout the sessions however gave poor eye contact to social work assessors. It is our experience that younger boys tend to more respectful to assessors.

During the minded to meetings when assessors informed [BM] we were minded to believe him to be older than he presented with a confrontational attitude and seemed quite annoyed rather than worried or scared. There were no tears to signal he was distressed and he continued speaking at the same rate. He was defiant making comments about not answering anymore questions or coming to the final session despite assessors making it clear that we were taking more time to consider the other information he provided out of fairness to him. Assessors feels [sic] this presentation further reinforces he is likely older [sic].

The lack of reliability of [BM's] sources of information on his age, coupled with his adult physical appearance and presentation suggests that in the balance of probabilities [sic], he is much more likely to be older than the years he is claiming to be. The conclusion reached is that [BM] is over 18 years of age and therefore not a child or not entitled to support from Children's Services."

The Applicant's Evidence

17. The Applicant has made two witness statements. I will seek to summarise his evidence as follows:
18. The Applicant was born in a village called Dara Pashayi in Paghman district. His maternal and paternal grandparents passed away before he was born or when he was really young. He always lived in the family home which was made of mud and had two bedrooms, a kitchen, washroom and yard. The family slept in one room. The family kept livestock. He had a younger brother, [H] and a younger sister [A]. There was, he believes, around a year's difference between himself and his sister, however he is not sure. He does not know the difference in age between his siblings. He does not know their dates of birth as it is not something that in his culture people pay attention to. He does know, however, that his brother was the youngest of the three.
19. The Applicant's father was in the national army and the family had a comfortable life. He would often be away from home. He would come home every four to six months and stay for around ten to twenty days. He was killed in the line of duty when the Applicant was aged 12. He and his siblings would help their mother sell goats' and cows' milk in order to provide an income.

20. The Applicant believes that he was about aged 7 or 8 when he started school. In Afghanistan people usually start school earlier, around age 6 or 7. However, the war delayed the start of his education. The school was a two-hour walk from his home. Girls attended school in the morning and boys in the evening. Sometimes the Applicant had to walk his sister to school in the morning. She was not allowed to walk alone, which is the norm in his culture. Sometimes his sister would stay at home and help his mother.
21. The Applicant's brother had a health condition. He had to attend the hospital in Kabul once a month for injections. He and the Applicant's mother were killed by a suicide bomb while travelling to the hospital. The Applicant was told about their deaths by "Yosifzai" (his mother's cousin whom he called "uncle"). He was not told by a neighbour as it is suggested he told the assessors. He attended the burial with his sister the next day.
22. The Applicant and A continued to live in the family home. Relatives living nearby looked after them. At some point, his uncle adopted the Applicant's sister and she went to live with him. He had two sons and he wanted a daughter. They did not adopt the Applicant because his uncle and his wife did not like him. However, he would stay at his uncle's house at night because he was scared to be alone. He did not live on the streets. He was not homeless as it is claimed that he told the assessors.
23. The Applicant was approximately aged 14 when he left Afghanistan. He believes he left during the summer. He travelled with six or seven friends. He can remember the names of three of them. The eldest was about aged 18 or 19. He does not know who made the travel arrangements. He was not involved in this. They travelled for two days with many other people by bus to Iran. He cannot remember how long the journey took overall because they had to keep stopping. They got off the bus near to the border and continued by foot for around an hour. He was then put into the boot of a car and taken to a house in Tehran where he waited for around twenty to thirty minutes for another car to arrive. He was put into the boot of a car again with others and taken to another house where he believes that he stayed for about a week. He believes he was in Iran for around three weeks (not two and a half months as the assessors alleged that he told them).
24. The Applicant travelled to Turkey in the boot of a car (not by motorbike as the assessors claimed he told them). They were shot at by the authorities. The Applicant managed to escape. He was found that evening by the agent. He was put on a bus and he travelled for about two nights and a day before reaching Istanbul where he was arrested and remained in jail for a period of time. He cannot remember how long he was detained. However, he did not say he remained there for four months or that he was in a cell with twenty other people, which it is alleged he told the assessors. He cannot remember why he was released.
25. On his release he was met by his friend (Shoaib). He was from the same village as the Applicant in Afghanistan. He agreed to let the

- Applicant stay with him. He stayed with Shoaib for around eight to ten days. (Contrary to what it is alleged he said to the assessors, he did not live on the streets). Shoaib told him that he knew people who could help him to travel to Greece. Shoaib paid for his journey. Shoaib was not a smuggler (as it is alleged he told the assessors). Shoaib knew the Applicant's father's name. The Applicant did not know him before they met in Greece. Before the Applicant was arrested by the authorities in Istanbul his friend with whom he travelled gave him Shoaib's telephone number and told him that if he had any trouble he could call that number.
26. The Applicant told the assessors that Shoaib knew people who were smugglers and that they helped him. They were taken to Greece by car and then boat. They walked through "a jungle" and then got on a bus. He cannot remember how long the journey took overall. He stayed in a house in Athens.
 27. Throughout his time in Greece he stayed with friends. His friends arranged for him to travel to Serbia by train. He cannot remember how long this journey took because he was in hiding. However, on arrival to Serbia he was taken to a camp by the police. He does not believe that he was there for seven to eight months, which he is alleged to have told the assessors. He left Serbia with some Afghan friends whom he met in the camp. He travelled with them because they had phones with GPS so they knew where they were going. They travelled to Croatia through Bosnia. He believes the journey took around one and a half to two months overall. They travelled by foot and sometimes by car or train. The journey was challenging and he cannot remember the precise details. However, he did not state to the assessors that it took a week to travel by foot from Serbia to Bosnia as this would not be possible. He was often abused by the police, chased or hurt. From Croatia the Applicant and his friends travelled to Italy. He cannot remember how long the journey took. They spent the majority of the time travelling by foot. He also travelled by car and train. He cannot remember where they arrived in Italy. They went their separate ways on arrival. He had to sleep on the streets in Italy for around two or three nights (not two or three weeks as it is alleged he said during the assessment). He travelled to Paris by train where he stayed with his friend for three or four nights. He travelled alone to Calais by train where he stayed for around a month in a tent. He travelled to the UK by boat.
 28. The Applicant did not fund the journey to the UK. It was funded by friends or people that he met on the way. The Applicant is accommodated by the Home Office. The hotel is full of adults and people who are significantly older than him. He finds it difficult living with adults and sometimes he is scared when he has to go out alone. He feels unsafe and tends to stay in the room which makes him feel isolated and lonely. He has no support from anyone. His mental health has deteriorated.
 29. During the assessment two interpreters assisted the Applicant. He was able to understand the female interpreter from Iran. The other interpreter was a man from Pakistan. The Applicant struggled to understand him. He cannot remember being asked if he understood the

- interpreter before the age assessment began. In any event, if he had been, he would not have understood.
30. The assessment was very stressful and the Applicant did not feel comfortable. He answered the questions that he was asked. He felt pressured to give an answer. The record made by the assessors of what the Applicant said is not correct.
 31. The Applicant knows his date of birth because he remembers going with his father to enrol at school. The year of his birth in the Afghan calendar is 1384. This is what he heard his father say when he enrolled at school. His father had the Applicant's Taskira with him. This was the first time the Applicant remembers hearing his date of birth. He informed the assessors that he had a Taskira and he described it accurately, but he did not state what information he saw on it. He was informed of the content by his father.
 32. The Applicant has never stated that he knew his birthday to be 15 September 2005. He does not use the Gregorian calendar. He has always used the Afghan calendar. He has always stated that he was born in the second month referring to the Afghani calendar. He does not know the second month in the Gregorian calendar. He has never stated that his birthday was February.
 33. He did not say during the assessment that he knew his date of birth as he had seen it on his vaccination card. He cannot read Dari very well. He told the assessors that he was told what was on the vaccination card by his mother.
 34. In relation to the four potential dates of birth that he allegedly gave throughout the assessment, the first date of birth, namely 7 February 1996 was not given by him, it was assigned to him by the Home Office and the assessors. He has not stated that he was born in February. He has always stated that he was born in the second month according to the Afghan calendar. He has always maintained that his birth month is the second month in the Afghan calendar, which he knows to be Sawr. However, during the assessment the assessors referred to the Persian calendar, which he is not familiar with, however he has been advised by his solicitors that there is a month called Azar which sounds similar to Sawr and which converts to September in the Gregorian calendar. This may account for the date of birth attributed to him of 15 September 2005. However, he has never claimed to have been born in September and he does not know the Gregorian calendar. He has always claimed to be born in the second month of the Afghan calendar, which is Sawr and which he has been told converts to May in the Gregorian calendar.

The Respondent's submissions

35. The Respondent relied on a skeleton argument which I will summarise. Ms Hurst also made oral submissions. I will engage with these in my findings.

36. The Respondent submits that the number of inconsistencies presented by the Applicant throughout the age assessment and within his witness statements call into question his credibility. He is unable to provide a credible explanation of how he worked out his date of birth. He explained and accepted on a number of occasions throughout the age assessment interviews that he did not know his date of birth or his year of birth in the Afghan calendar. He explained that he worked out his date of birth as his mum had told him his age. However, there is no clear explanation of how he calculated this.
37. In his second witness statement the Applicant states that his year of birth is 1348 in the Afghan calendar and that he knows this because he heard his father say it when he was enrolled in school. In his first witness statement the Applicant states his enrolment at school was the first time he heard his date of birth. There is no reference made to his father telling him his date of birth during the age assessment interviews when asked about this.
38. The Applicant has asserted a number of different dates of birth throughout the age assessment process. When he first arrived in the UK he told the Home Office his date of birth was 7 February 1996. When he arrived in Leeds he confirmed his date of birth was 15 February 2005. Having reviewed the Applicant's social media records he provided 16 February 2005 as his date of birth on signing up. The date of birth now asserted by the Applicant is 15 May 2005 which was first mentioned during the minded to meetings. This date of birth was not provided by the Applicant himself, rather it was put to the Applicant following the assessor undertaking a conversion calculation from the Afghan to the Gregorian calendar.
39. The Applicant has failed to provide a clear and consistent timeline to corroborate the asserted date of birth. He repeated throughout each of the interviews that he started school at the age of 6; however, in his witness statements he asserts he was aged 7 or 8. During the first meeting the Applicant stated that he left school in the middle of fifth year due to his father's death. In the second meeting the Applicant said he did not actually start fifth year and was aged 12 years old when he left. In the "minded to" meeting it was put to the Applicant that if he started school at 6 and only attended for four years, as he claimed, he would have been aged 9/10 when he left rather than 12, as he had previously stated. The Applicant then explained the two year discrepancy by stating that he had stopped school, not because his father died, as previously stated, but because it had been closed due to the war.
40. The Applicant has failed to provide a clear timeline for his journey to the UK. In his witness statement the Applicant accepted that he does not know the month or year he left Afghanistan. During the age assessment interview the Applicant was only able to provide approximate durations for his travel and the time spent in each country. The Applicant accepts he has no way of keeping a record of this. In his witness statement however the Applicant repeatedly states that he cannot remember how long journeys took/how long he was in each place for and provides a

- different account of the journeys made and time spent in the different countries.
41. During the first age assessment session the Applicant said he could read Dari well. However, in the later minded to meeting, he said he could not read Dari.
 42. The Applicant's physical appearance is inconsistent with the history he provided at each meeting, including the minded to meeting, of living on the streets and in harsh conditions with very little food for a number of years prior to his arrival in the UK. What is more, the Applicant's witness statement asserts that he did not in fact live on the streets in Afghanistan for two years as he had previously stated, this being a further inconsistency.
 43. The Applicant suggests that inconsistency may have resulted from the interpreter not being able to understand him. However, it is notable that his account of living on the streets was provided via the female interpreter whom the Applicant states he was able to understand and no objections were raised by the Applicant at the time. The Applicant instead provided a clear account of living on the streets for two years before leaving Afghanistan. During the first age assessment the Applicant stated that he had seen his vaccination card and was able to provide details of the information contained thereon. However in the final minded to meeting, the Applicant stated he was not able to read it and was only repeating what his mother had told him. The Applicant had previously stated his mother was illiterate and therefore his explanation is queried as to how she could have read the vaccination card to explain it to him.
 44. A full and careful explanation of the nature and purpose of the assessment as well as the role of the assessing social worker was provided to the Applicant. It was confirmed his first language was Dari and an interpreter was present. The Applicant confirmed he was able to understand the interpreter fully and agreed to have them present throughout the meetings. He was advised that if he was struggling to understand he should say so for alternative arrangements to be made. He did not raise any concerns or issues as to his understanding of the interpreter during the assessment or minded to meetings, either with the social worker present or his appropriate adult. The Applicant correctly notes that two interpreters were used over the course of the assessments; one male for the final two sessions and one female for the first two sessions. The Respondent wishes to confirm that the male interpreter, is Afghan and not Pakistani, as suggested by the Applicant. Ms McCullough confirms that the interpreters used were experienced and if she had had any concerns about a lack of understanding this would have been explored and the session stopped
 45. The interview was undertaken in a structured, fair and non-adversarial, non-stressful and informal manner. The Applicant was asked if he felt fit and well at the start of each interview and he was offered breaks. Notes of the questions and interviews were kept by those present during the meetings. The assessors paid close attention the Applicant and his

- presentation throughout. They appreciated the difficulties faced by him in his situation and his ethnicity and culture. They assured the Applicant he would receive support whatever the outcome.
46. The assessors took a history from the Applicant and when reaching their conclusion took into account all relevant factors, including the Applicant's physical appearance and behaviours, but was not limited to these factors alone. Considering a person's physical appearance and demeanour is not prohibited and is endorsed as a relevant factor as part of the Merton principles as long as assessments are not limited to this factor only. Ms McCullough readily accepts the difficulties in assessing age based on physical appearance and demeanour alone however, these were not the only factors discussed or considered in the Respondent's assessment. It is mentioned in the social worker's analysis as one of a number of reasons, including discrepancies in the date of birth shared and the unreliability of the Applicant's timeline.
 47. It is an agreed fact that each interview and minded to meeting was undertaken by two assessors. They had received appropriate training and had experience in conducting age assessment interviews of this nature. The assessors sought to establish a rapport with the Applicant at the beginning of the interview with questions about his early life and family. They asked non-leading questions and revisited areas of questioning where the Applicant appeared uncertain or confused. At no point has it been asserted that the assessors held any medical expertise in relation to findings of physical development. However, it is submitted forcefully on behalf of the Respondent that Ms McCulloch, Ms Holroyd and Ms Swaby are in fact experts in their field; each having undertaken specific and in the case of Ms Holroyd in particular extensive training in conducting age assessments.
 48. The Applicant relied on reports that it is submitted attached credibility to the Applicant's chronology and should have been considered by the Respondent. There is no explanation to how these provide credibility to the Applicant's timeline. It is accepted that the eight reports attest to significant civil unrest in Afghanistan between 2016 and 2017 however this speaks to only one part of the Applicant's chronology.
 49. The Applicant points to trauma as an explanation for the lack of consistency in his chronology. It is accepted that the same should be taken into account when assessing the age of a vulnerable individual. However, the number of inconsistencies presented by the Applicant cannot and should not be ignored by the Tribunal. An appreciation of the Applicant's vulnerabilities, religious and cultural beliefs is demonstrated throughout the assessment and evidenced by the many breaks that were offered.
 50. The Respondent's position is that the assessment is Merton compliant and therefore carried out in accordance with ADCS Age Assessment Guidance.

The Appellant's Submissions

51. The Applicant relied on a skeleton argument consisting of 17 pages. I will summarise this. Mr Berry also relied on oral submissions which I engage with in my findings.
52. The Applicant submits that his credibility should be assessed in the context of background reports and country reports set out at para 7 of Mr Berry's skeleton argument.
53. The Applicant's account is consistent, makes chronological sense and is supported in uncontroversial background material. While he does not have a birth certificate or Taskira, from his testimony he leads evidence that establishes his claimed age. There are minor inconsistencies that do not go to the core of his account and may be expected from someone of his age who has experienced being forcibly displaced from his village and who has been forced to flee, who had an arduous journey to the UK and who has not received any therapeutic assistance. The Applicant has a chronological account of his age and the milestones of growing up that are consistent with his account of his experiences chimes with and does not cut against what can be discerned from uncontroversial background material concerning displaced people from Afghanistan who seek surrogate protection in the UK.
54. It is submitted that little or no weight should be given to the age assessment, which shows an unsustainable approach to the task of assessing age in relying on assumptions and suppositions that are unsupported and without foundation and in disregarding or ignoring key ADCS guidance. For example, there is no attempt to assess the Applicant's credibility against country reports and background material in order to draw conclusions. The age assessment does not assess cultural and ethnic factors as they impact on the Applicant's presentation and age.
55. The witness statements from social workers do not improve matters as they show a want of use of background reports on Afghanistan. The notes of the age assessment show evidence of trauma. Such material is an indication that complete consistency is not to be expected.
56. The Applicant disclosed that his schooling was disturbed through war and that his father died. He asked not to discuss the bombing which caused the death of his mother and brother and stated that he was not in a good state of mind and no-one was there to guide him at that time. He said during the assessment "I am not coming here again, it hurts to remind me of my parents". He stated during the assessment that he had a good life when his father was alive. He said during questioning "I request you lady don't ask about my parent or their death".
57. The Applicant raises the following problems with the age assessment:-
 - "(i) Physical appearance and demeanour; the Respondent had suggested that the Applicant's 'appearance' is not in line with his account of someone who has lived in the streets and been malnourished for four years;

- (ii) While the Applicant was on the streets, he was able to obtain food as necessary. In addition, the intake of sustenance is not the only factor which determines body shape.
- (iii) The Respondent also stated that the Applicant has 'youthful appearance' and a 'smooth, mature looking appearance'. Consequently, it is difficult to see how it drew a distinction to reach the conclusion that the Applicant is 18 years of age and not 16 years of age.
- (iv) The limited utility of evidence of physical characteristics, as set out in R (AM) and Solihull MBC (per Mr CMG Ockleton and UT Judge Lane) at paragraphs 15 - 16.
- (v) In the age assessment the Respondent states within the assessment that the Applicant 'had poor eye contact with assessment social workers often looking down as his feet or putting his head in his hands' but gave 'consistent direct eye contact to the interpreter'. The Respondent further noted that the Applicant 'presented as frustrated and at times disinterested and impatient with a confident tone in his voice' and that the Applicant 'appeared slightly smug'. These may be unreliable markers, see by way of illustration the comments in R (AM) and Solihull at paragraph 19.
- (vi) It was difficult to see the relevance of the Applicant's demeanour in circumstances where he was clearly uncomfortable in answering questions in relation to his traumatic experiences, particularly when the demeanour was only observed over a couple of days.
- (viii) In the age assessment the Respondent suggested that there are four potential dates of birth which have been given; 7 February 1996, 15 February 2005, 15 September 2005 and 15 May 2005. However this is not the case. 7 February 1996 was recorded by the Home Office and the Respondent is incorrect to assign his date of birth as having been given by the Applicant. The Applicant has maintained throughout that his date of birth is the 15th of the second month 1384 in the Afghan calendar. There is no discrepancy as to the year as 1384 converts to 2005 in the Gregorian calendar, therefore the discrepancy lies with the month. The Applicant has maintained that he was born on the second month in the Afghani calendar, which he states to be Sawr. It is apparent from the age assessment that the Respondent was placing emphasis on the 'second month' and not the calendar being used and therefore reached February as being the month of its own accord.
- (ix) Page 11 of the age assessment refers to the Persian calendar. Despite the Applicant maintaining that he uses the Afghan calendar to the extent that he could 'recite/remember all twelve months'. Within the Persian calendar there is an Azar (similar sounding to Sawr which converts to September 2005).

Therefore, it is clear to see that the discrepancy is not as a result of the Applicant's given account but due to the Respondent using the incorrect calendar.

- (x) The Respondent suggests that the Applicant had given inconsistent accounts in relation to his time at school. However, the ADCS guidance highlights that 'avoidance of painful memories and shame and stigma attached to humiliating experiences of abuse may lead to confused narratives, inconsistencies or non-disclosure of significant events.' As the Respondent records, the Applicant was clearly distressed by the conversation about his father and had to take breaks when speaking about the topic. Nonetheless, this is not a point which should have had significant weight attributed to it given that the Applicant's final response does provide a clear explanation.
 - (x) **The age assessors spoke to staff at the Applicant's previous placement who noted that he 'does fit in well and they felt his presentation could be in line with his claimed age of 16/17' but goes further on to state 'physical/behavioural differences between individuals in later teens 16/19 years old would be slight in many instances and therefore cannot solely rely on eyewitness accounts to clarify age. The Respondent has wrongly discounted the opinions of staff at the placement given that they, at the time of the age assessment had more consistent contact with the Applicant and saw the interaction age assessors who spent only a few hours over two days and who came to the conclusion that he is 18 years of age and not 16 years of age.'**
58. The Respondent's approach to the question of physical appearance/development capabilities is arbitrary and unsupported by the evidence available. The Respondent has failed to give any reasons or indication why it is believed that the Applicant is 18 as opposed to 16 or 17.
59. It is not doubted that the social workers are acting in good faith but the way in which their task was discharged is flawed and no weight should be attached to the assessment. The Respondent's decision is based on assumptions, incorrect information and irrelevant consideration such as physical appearance. There is no adequate or sufficient explanation whatsoever as to how the Respondent has arrived at assessing the Applicant as being 18 years of age.

Conclusions

60. I consider the evidence applying the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance. Whether this Applicant is a

child or not, he is a young person who is vulnerable. I consider his credibility in this context.

61. The Applicant was extensively cross-examined by Ms Hurst. Mr Berry did not ask any questions in evidence-in-chief, other than asking the Applicant to adopt his witness statements, which he did. There was no re-examination.
62. I will engage with the Applicant's oral evidence in my findings. It was problematic for a number of reasons. He has not been able to maintain a consistent account throughout these proceedings. His overall evidence was littered with inconsistencies and at times incoherent.
63. Although the Applicant did not accept in his oral evidence that there were four meetings in total including two minded to meetings (his oral evidence was that he had three meetings), Mr Berry said it was accepted that there were four meetings in total.
64. The parties addressed me at length concerning whether the age assessment was Merton compliant. I remind myself that the issue for me is the Applicant's age. Whether the age assessment was Merton compliant is not determinative of the issue. However, I will engage with reasons advanced by Mr Berry to support his assertion that it was not Merton compliant because it will affect the weight I should attach to it.
65. Mr Berry submitted that the age assessment "shows an unsustainable approach to the task of assessing age, in relying on assumptions and suppositions that are unsupported and without foundation, and in disregarding or ignoring key ADCS guidelines, in particular; *Avoidance of painful memories and shame and stigma attached to humiliating experiences of abuse may lead to confused narratives, inconsistencies or non-disclosure of significant events*". I do not accept this submission.
66. There are many aspects of the age assessment that the Applicant does not agree with. He states that the assessors did not make an accurate record of what he said and that there were problems with understanding the interpreter. There was no evidence to support inaccuracy in the notes and records of the assessors. Furthermore, the Applicant failed to give a coherent or credible account about misunderstandings between him and an interpreter. At [7] of his witness statement he blamed one of the interpreters for misunderstandings, but in oral evidence identified a different interpreter as being the problem. Mr Berry did not pursue this with any vigour. He submitted that any inconsistencies were on account of trauma and in any event the Applicant had been consistent about core details of his account.
67. Mr Berry pointed to trauma as an explanation for the lack of consistency in the Applicant's chronology. He said that this was not properly factored into the age assessment. The problem with this submission is that it does not take account of the extent of the inconsistencies presented by the Applicant, across a range of issues discussed during the age assessment interviews. While Mr Berry did not rely on bad faith, this does not entirely square with the Applicant's oral

evidence that the assessors had written things that he did not say. (If the Applicant is saying that the assessors made so many errors because they were not competent, I do not accept this either).

68. I have considered the impact of trauma. It is likely that the Applicant has experienced trauma. He gave an account of his father having been killed when in active service and his mother and brother having been killed in a suicide bomb. While I accept that the questioning of the Applicant disclosed by the written transcript and the notes of the social workers (and the appropriate adult) discloses a lack of sensitivity, the words recorded do not provide a complete picture of the assessment which consisted of four face to face interviews. The written transcript of questions and answers is not the whole story and do not convey the manner in which the questions were put to the Applicant and the demeanour of the assessors. It is to be expected that such nuances would not be apparent from a transcript. The manner of the assessors and the tone of the interview cannot be gleaned from the written record alone. I attach weight to the appropriate adult, Daniel Glover from the Refugee Council, not having raised any concerns. It can reasonably be inferred from this that he had no cause for concern.
69. I have no doubt that the Applicant felt uncomfortable and nervous in the age assessment. He may also have felt some pressure. I accept that it would have been difficult for Applicant to give an account in the environment of a formal age assessment or indeed during a hearing. However, the same cannot readily be said about giving a statement to his solicitor. The Applicant's witness statements do not sufficiently engage with the inconsistencies in the account given during the assessment (his evidence is that the age assessment incorrectly recorded what he said for which there is no support) and they do not give a clear account of his age, how he knows his age and a coherent timeline. I accept that the Applicant has been traumatised which may account for some inconsistency. I accept that it is likely that he would wish to avoid questioning particularly if it concerns the death of close family members. I accept that this Applicant is very likely to have experienced trauma giving him a reason to leave Afghanistan and during an arduous and at times dangerous journey to the United Kingdom. However, this does not explain the extent of the discrepancies in his account, particularly concerning his age and date of birth and timeline. I take into account that the Applicant in his evidence seeks to distance himself from what the assessors recorded him as having said which they found undermined what his account. For example, he has denied having said that he had lived on the streets because this gave rise to the assessors questioning his alleged age.
70. There was no meaningful challenge to the experience and expertise of the social workers set out in witness statements. The evidence supports that they are properly trained and experienced. The ADCS Age Assessment Guidance is guidance. There is no statute prescribing how a local authority ought to carry out age assessments. In any event, I do not agree that the interview overall shows a disregard of the guidance. It is clear from the evidence of Ms McCullough that the assessors were aware that the questions would be difficult for the Applicant (see [23] of

her witness statement) and he was encouraged to take regular breaks (see [22] of her witness statement).

71. Mr Berry said that the assessors did not take into account the background evidence concerning Afghanistan. While I accept that the background evidence is capable of supporting conflict in the region in Afghanistan and it is not entirely clear that the evidence of conflict in the region was a factor which the taken into account by the age assessors, it does not directly assist with the assessment of the Applicant's age. The main problem with the Applicant's account is inconsistency and the failure to give a timeline that supports his claimed age. There is no suggestion that his account is inherently implausible in a broad sense. I accept that when assessing the Applicant's age that taking a broad view his account of violence and fleeing his village is supported by the background evidence.
72. The Applicant told the assessors that he knows his birthday is 15 September 2005 in the western calendar. He told them that that he used the Afghan calendar growing up but he was unable to provide a year of birth in the Afghan calendar. He told them that he was not sure of the month in the western calendar, but that his mum said he was born in the 2nd month of the Afghan calendar (Sawr). He said he was aged 16. In the minded to meeting he was told that if he were born in September, he would be aged 15. He said that he did not know the month of his birth in the western calendar, but only that it is the second month in his calendar. In oral evidence the Applicant accepted that he had given a date of birth to the assessors of 15 September 2005 and 15 February 2005. He said in oral evidence that if he had been asked ten times for his date of birth he would have given ten different accounts because he was not familiar with the Gregorian calendar. In his witness statement the Applicant confirmed that he was born in the second month (Sawr) referring to the Afghan calendar which he was told by his solicitors is February in the Gregorian calendar. He is not familiar with the Persian calendar and believes that confusion has arisen from the month of Azar in the Persian calendar which sounds similar to Sawr and which is September in the Gregorian calendar. Sawr is May in the Gregorian calendar. Taking this into account in the context of the evidence in the round, it may be that this Applicant is aware that he was born in the second month in the Afghan calendar.
73. It is likely that the Applicant has no knowledge of the day or the year he was born or how old he is. It is significant that he was not able to tell the assessors the year he was born in the Afghan calendar. He told them that he did not know it. However, this is not consistent with his witness statement where he gives the year of his birth in the Afghan calendar. The Applicant told the assessors that he did not know his Afghan date of birth. He said that he did not remember the year of his birth but he understood how old he was. He worked out the "western date" using simple maths - he knows he is aged 16 and he counted back. However, he was unable to explain at any time in the proceedings how he calculated this.
74. While he told the assessors he was aged 16, the Applicant has not at any time given a clear and coherent account explaining how he knows this or

a clear timeline that is capable of supporting he is the age he claims to be. At one point in the age assessment he said that he had seen his date of birth on his vaccination card. However, he also said that he had not seen his date of birth on the vaccination card and he cannot read. He also said in the age assessment that that he could read Dari well.

75. In oral evidence he said that he had seen his date of birth on his vaccination card. He said that he saw the number 1384 which is the year of his birth and which translates to 2005. He said in oral evidence that he could read the numbers on the card. He also said that he asked his mother and she told him what was on the card. He also said that he saw [his date of birth] on his vaccination card but he could not read it although he knew the numbers. He asked his mum what they were and she said it was his date of birth. In oral evidence he also stated that she did not tell him the year of birth because she was illiterate, but that she could count. Mr Berry's main submission in respect of the vaccination card was that what he (Mr Berry) understood from the Applicant's oral evidence was that there were numbers on the card and his mother told the Applicant that they represented his date of birth but not that either of them understood /read the actual numbers. This is one possible interpretation of the Applicant's evidence about the vaccination card. However, if this is the Appellant's evidence, it begs the question why he did not make this clear in his witness statements (if he was unable to give a coherent account in the age assessment for the reasons advanced by Mr Berry or in a court setting). The Applicant's evidence is muddled and incoherent so that it is not possible to understand from it how he is aware of his date of birth or his age (or that his mother was) from what was written on the vaccination card.
76. The Applicant in the age assessment said he had a Taskira which he got just before starting school and which recorded amongst other things his date of birth. In the Applicant's first witness statement he stated that he was informed by his father what was on the Taskira and he remembers being enrolled in school with his father who read out the information. He confirmed in his witness statement that he had not read the document himself because he could not read Dari very well. In the Applicant's second witness statement he states (for the first time) that date of birth is 1348 in the Afghan calendar and he knows this because he heard his father say it when he was enrolled at school. There is no reference in the age assessment to the Applicant's father telling him his date of birth in this context. Moreover, this does not sit well with the Applicant having not mentioned the year of his birth to the assessors or at all until his second witness statement.
77. Mr Berry submitted that the Taskira was a new matter raised by the Applicant in the age assessment which was not necessarily inconsistent with what the Applicant had already said to the assessors. Mr Berry said that the Applicant should have been asked more questions by the assessors about it. I do not accept that the questioning was deficient because the Applicant was not asked further questions when he raised the matter of his Taskira. The Applicant was given ample opportunity to explain how he knew his age and date of birth during the age assessment. On a number of occasions throughout the age assessment

interviews the Applicant said that he did not know his date or year of birth in the Afghan calendar. His evidence has changed for which there is no explanation. If the Applicant's inconsistent account is as a result of trauma, the Applicant had the opportunity to set the record straight in his witness statements but failed to do so.

78. The Applicant also stated that his mother told him his age when he was aged 12 and that from this he has worked out his date of birth. She may well have told him this but the Applicant has not given a clear or coherent account which supports that from this information he has been able to calculate his age. The Applicant was unable to give a coherent timeline.
79. The Applicant's evidence and what he said in the age assessment about his age when he started school and in what school year he finished is inconsistent. He was also inconsistent about why he left school. The Applicant repeated throughout the age assessment he started school at the age of 6, however, in his witness statements he asserts he was aged 7 or 8. During the first assessment the Applicant stated that he left school in the middle of the fifth year due to his father's death. In the second meeting the Applicant said he did not actually start fifth year and was 12 years old when he left. In the 'minded to' meeting, it was put to the Applicant that if he started school at 6 and only attended for 4 years, as he had stated, he would have been aged 9 or 10 when he left, rather than 12 as he had previously stated. The Applicant then explained the 2-year discrepancy by stating that he had stopped school, not because his father had died, as stated previously, but because it had closed due to the war. During oral evidence the Applicant denied having said he started school at the age of 6 in the assessment. It is likely that the assessors made an accurate note of what he said. Considering the evidence overall, it is likely that the Applicant is seeking to account for the discrepancy in the timeline identified by the assessors. I have considered that the reasons why he says that he stopped attending school are not necessarily mutually exclusive; however, the point is that he has not given a consistent account.
80. Mr Berry submitted that the Applicant has been consistent about the day and month of the Afghan Calendar he was born, that his mother knows his date of birth, that she told him when he was aged 12 and he that he knows his age. I have considered this submission. I accept that there has been a degree of consistency in the Applicant's assertion that he was born in the second month in the Afghan calendar, however, he has failed to give a coherent account concerning the year of his birth, his age and how he is aware of this information. Moreover, there are problems with the timeline which the Applicant has not been able to reasonably account for.
81. The Applicant was not able to identify his year of his birth in the Afghan calendar during the age assessment and therefore it was not clear how he could have worked out his age in the Gregorian calendar using "simple maths" as he claimed. He was not able to explain this in oral evidence.

82. While I understand Mr Berry's argument that the Applicant knew his age, if not his date of birth, the Applicant has not given a coherent account of how he knew his age. He said that he was aged 14 when he left Afghanistan but did not give a cogent explanation how he knew this beyond his mother having told him when he was 12. If his evidence is that he counted back from 16 in order to work out his year of birth, this is problematic because he has failed to give a coherent account of how he knew his age in the first place and the timeline he has given does not support that he is the age he claims to be.
83. I accept that the assessors took into account the Applicant's physical appearance. It is clear from [27] of Laura McCullough's statement that the assessor's were aware of the Merton guidelines when considering physical appearance and this is reflected in the age assessment. At [30] she states that physical appearance and demeaner were not the only factors discussed in the assessment and it is one of a number of reasons in concluding that the Applicant is aged 18. When assessing age I do not attach significant weight to the observations about the Applicant's physical appearance or demeanour. I make no observations about these matters.
84. I take into account that the age assessors spoke to staff at the Applicant's placement separately to gauge their opinion of the Applicant's possible age as they would see him in a more comfortable setting day to day and interacting with other young people. According to the age assessors staff advised that the Applicant is "quiet and more sensible than (sic) some of the other boys however he does fit in well and they felt his presentation could be in line with his claimed age of 16/17". The age assessors considered age in this context. I attach some weight to the evidence of staff because it is capable of supporting the Applicant's account. The staff at the placement have seen the Applicant outside of an interview/assessment situation and over a period of time (although the length of the period of time is unclear). However, what they say is in vague terms (*could be*) and stands alone as independent evidence in support of the Applicant being the age he claims to be.
85. The Applicant was unable to give a consistent account about his journey to the United Kingdom. There were many inconsistencies in respect of the time he spent in particular countries (in the age assessment he said that he spent two months in Iran, in his witness statement he said three weeks and in oral evidence less than a week). I note that there is an inconsistency relating to what the Applicant said happened to his sister with reference to his uncle.
86. I have carried out a holistic assessment of the evidence and reached a conclusion. Drawing together the evidence, it is likely that the Applicant is aware that he was born in the second month of the Afghan Calendar. He has been relatively consistent about this. It is likely that confusion has arisen from the translation into the Gregorian calendar (of which it is clear that the Applicant has no understanding) and the use of a Persian Calendar. I accept this may account for confusion between months. Taking into account all of the evidence, it is more likely than not that the Applicant does not know when he was born, his year or day of birth (in

any calendar) or his age. Taking into account the discrepancies in the timeline given by the Applicant together with all the evidence, it is likely that the Applicant is older than he claims to be by two years.

87. I find that the Applicant's date of birth is 5 May 2003.

Joanna McWilliam
UTJ McWilliam
9 March 2023